

STATE OF MICHIGAN
COURT OF APPEALS

CALVIN E. SHUSTER,

Plaintiff-Appellant,

v

DAIMLERCHRYSLER CORPORATION, f/k/a
CHRYSLER CORPORATION,

Defendant-Appellee.

UNPUBLISHED

March 1, 2005

No. 250713

Wayne Circuit Court

LC No. 00-041060-NZ

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's orders enforcing the parties' on-the-record settlement agreement and granting plaintiff's attorney a lien for attorney fees in the amount of \$15,000. We affirm.

At a hearing on November 19, 2002, the parties informed the court that they had settled their lawsuit and the terms of settlement were placed on the record. In pertinent part, defendant agreed to pay plaintiff retirement benefits of \$55,000 a year for life, to be funded partially by eligible employee option pension benefits and partially by an annuity contract to be purchased by defendant. The parties also agreed that "there will be no Social Security offset unless [plaintiff] applies for Social Security benefits before the age of sixty-two and one twelfth years of age," and that plaintiff would be responsible for any tax consequences of the payments he received. Additionally, it was agreed that defendant would pay \$15,000 toward plaintiff's attorney fees. Plaintiff subsequently moved to set aside the settlement agreement on the basis that there was no meeting of the minds, or a mutual mistake of fact, with respect to the ownership of the annuity contract and the validity of the Social Security setoff provision. The trial court denied the motion, entered an order enforcing the on-the-record settlement, and entered a separate order granting plaintiff's attorney a lien for attorney fees in the amount of \$15,000.

Plaintiff maintains that an enforceable agreement never arose because there was no meeting of the minds with respect to which party would own the annuity contract, or the validity of the provision prohibiting a Social Security setoff. We disagree.

A settlement agreement is binding when it is made in open court. MCR 2.507(H); *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999). An agreement to settle a pending lawsuit is a contract governed by the legal principles applicable to

the construction and interpretation of contracts. *Eaton Co Rd Comm'rs v Schultz*, 205 Mich App 371, 379; 521 NW2d 847 (1994). There must be a meeting of the minds, i.e. mutual assent, on all the material facts in order to form a valid agreement, and whether such a meeting of the minds occurred is judged by an objective, rather than subjective, standard, looking to the express words of the parties and their visible acts. *Kamalnath v Mercy Memorial Hospital Corp*, 194 Mich App 543, 548-550; 487 NW2d 499 (1992); *Groulx v Carlson*, 176 Mich App 484, 491; 440 NW2d 644 (1989).

In this case, plaintiff moved to set aside the settlement agreement, arguing that he would sustain unfavorable tax consequences if he owned the annuity contract. Although the issue of ownership was not explicitly discussed, the parties agreed that the annuity contract would be purchased for plaintiff's benefit, thus implicitly agreeing that plaintiff would own it. Furthermore, the issue of ownership was not material to the essential purpose of the agreement, i.e., to provide funds for plaintiff's receipt of retirement benefits of \$55,000 a year. Additionally, insofar that the question of ownership affected plaintiff's tax liability, plaintiff expressly agreed to be responsible for all tax consequences associated with the benefits he received. Under these circumstances, the trial court did not err in rejecting plaintiff's claim and ruling that plaintiff would own any annuity contract purchased by defendant.

Plaintiff also maintains that there was no meeting of the minds with respect to the effect of the provision restricting Social Security setoffs. But plaintiff merely asserts that it is possible that federal law may require that such setoffs be made. Although plaintiff asserts that a conflict between the settlement agreement and defendant's pension plan would be preempted by federal ERISA¹ law, he fails to identify any actual conflict affecting the agreement. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the party's claim. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). In any event, even if the parties' agreement conflicts with federal law, a mistake of law is not a ground for equitable relief. See *Sentry Ins Co v Claimsco International, Inc*, 239 Mich App 443, 447; 608 NW2d 519 (2000). The parties' express agreement with respect to social security setoffs compels the conclusion that there was a meeting of the minds on this issue.

We also reject plaintiff's claim that rescission of the settlement agreement is required due to a mutual mistake of fact with regard to these issues. To establish a mutual mistake of fact, a plaintiff must show that both parties were mistaken concerning an existing fact that was material to the agreement. *Gortney v Norfolk & Western Railway Co*, 216 Mich App 535; 549 NW2d 612 (1996).

In this case, ownership of the annuity was not material to the parties' agreement. Nor has plaintiff established a mutual mistake of fact concerning the Social Security setoff provision. Rather, plaintiff merely speculates that such a setoff may not be permitted under federal law, but does not explain his position. Further, to the extent that plaintiff harbored a mistaken

¹ Employee Retirement Insurance Security Act, 29 USC 1001 *et seq.*

understanding of the law, or a mistaken understanding of the tax consequences of the agreement, as previously indicated, a mistake of law does not justify rescission. *Sentry, supra* at 447.

Litigants are not free to disregard a settlement agreement simply because they have had a change of heart. *Groulx, supra* at 492. In this case, any concerns about the terms of the agreement were brought to the trial court's attention only after the agreement was formally placed on the record and after plaintiff informed the court that he agreed to the terms of settlement. Under these circumstances, the trial court did not abuse its discretion in enforcing the settlement agreement. *Id.* at 492-493.

Finally, having concluded that the settlement agreement is valid and enforceable, we find no basis for disturbing the trial court's award of a lien for attorney fees in the amount prescribed by the settlement agreement.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Henry William Saad
/s/ Michael R. Smolenski